

By: Ellis

S.B. No. 1868

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of certain residential mortgage
foreclosure consulting services; providing a criminal penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 2, Business & Commerce Code, is amended by
adding Chapter 21 to read as follows:

CHAPTER 21. REGULATION OF CERTAIN RESIDENTIAL FORECLOSURE

CONSULTING SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 21.001. DEFINITIONS. In this chapter:

(1) "Foreclosure consultant" means a person who
performs, or represents that the person can or will perform, for
compensation services in connection with the prevention or
postponement of foreclosure proceedings against a homeowner's
residential property or other services related to the foreclosure
of the property.

(2) "Residence in foreclosure" means residential real
property consisting of not more than four single-family dwelling
units, at least one of which is occupied as the homeowner's
principal place of residence, and against which a foreclosure
action has been commenced.

Sec. 21.002. EXCEPTION FROM APPLICABILITY OF CHAPTER. (a)
Except as provided by Subsection (b), this chapter does not apply to
the following persons who perform foreclosure consulting services:

1 (1) an attorney admitted to practice in this state who
2 performs those services in relation to the attorney's
3 attorney-client relationship with a homeowner or the beneficiary of
4 the lien being foreclosed;

5 (2) a person who holds or is owed an obligation secured
6 by a lien on a residence in foreclosure if the person performs those
7 services in connection with the obligation or lien;

8 (3) a person that regulates banks, trust companies,
9 savings and loan associations, credit unions, or insurance
10 companies under the laws of this state or the United States if the
11 person performs those services as part of the person's normal
12 business activities;

13 (4) an affiliate of a person described by Subdivision
14 (3) if the affiliate performs those services as part of the
15 affiliate's normal business activities;

16 (5) a judgment creditor of the homeowner of the
17 residence in foreclosure, if:

18 (A) the legal action giving rise to the judgment
19 was commenced before the notice of default required under Section
20 5.064 or 51.002(d), Property Code; and

21 (B) the judgment is recorded in the real property
22 records of the clerk of the county where the residence in
23 foreclosure is located;

24 (6) a licensed title insurer, title insurance agent,
25 or escrow officer authorized to transact business in this state if
26 the person is performing those services in conjunction with title
27 insurance or settlement services;

1 (7) a licensed real estate broker or real estate
2 salesperson if the person is engaging in an activity for which the
3 person is licensed;

4 (8) a mortgage broker or loan officer licensed under
5 Chapter 156, Finance Code, if the person is engaging in an activity
6 for which the person is licensed; or

7 (9) a nonprofit organization that provides solely
8 counseling or advice to homeowners who have a residence in
9 foreclosure or have defaulted on their home loans, unless the
10 organization is an associate of the foreclosure consultant.

11 (b) This chapter applies to a person described by Subsection
12 (a) if the person is providing foreclosure consulting services
13 designed or intended to transfer title, directly or indirectly, to
14 a residence in foreclosure to that person or the person's
15 associate.

16 [Sections 21.003-21.050 reserved for expansion]

17 SUBCHAPTER B. CONTRACT FOR SERVICES

18 Sec. 21.051. FORM AND TERMS OF CONTRACT. Each contract for
19 the purchase of the services of a foreclosure consultant by a
20 homeowner of a residence in foreclosure must be in writing, dated,
21 and signed by each homeowner and the foreclosure consultant.

22 Sec. 21.052. REQUIRED DISCLOSURE. Before entering into a
23 contract with a homeowner of a residence in foreclosure for the
24 purchase of the services of a foreclosure consultant, the
25 foreclosure consultant shall provide the homeowner written notice
26 stating the following, in at least 14-point boldfaced type:

27 NOTICE REQUIRED BY TEXAS LAW

1 (Name) or an associate of (Name) cannot ask you to
2 sign or have you sign any document that transfers any interest in
3 your home or property to (Name) or (Name's)
4 associate.

5 (Name) or (Name's) associate cannot guarantee you
6 that they will be able to refinance your home or arrange for you to
7 keep your home.

8 You may, at any time, cancel or rescind this contract, without
9 penalty of any kind.

10 If you want to cancel this contract, mail or deliver a signed and
11 dated copy of this notice of cancellation or rescission, or any
12 other written notice, indicating your intent to cancel or rescind
13 to (Name and address of foreclosure consultant)
14 at (Address of foreclosure consultant,
15 including facsimile and electronic mail address).

16 As part of any cancellation or rescission, you (the homeowner) must
17 repay any money spent on your behalf by (Name
18 of foreclosure consultant) prior to receipt of this notice and as a
19 result of this agreement, within 60 days, along with interest
20 calculated at the rate of eight percent per year.

21 [Sections 21.053-21.100 reserved for expansion]

22 SUBCHAPTER C. PROHIBITIONS, LIMITATIONS, AND DUTIES REGARDING
23 SERVICES

24 Sec. 21.101. RESTRICTIONS ON CHARGE OR RECEIPT OF
25 CONSIDERATION. A foreclosure consultant may not:

26 (1) charge, collect, or receive compensation until the
27 foreclosure consultant has fully performed each service the

foreclosure consultant has contracted to perform or has represented the foreclosure consultant can or will perform unless the foreclosure consultant has obtained a surety bond or established and maintained a surety account for each location at which the foreclosure consultant conducts business in the manner that Subchapter E, Chapter 393, Finance Code, provides for credit services organizations; or

(2) receive any consideration from a third party in connection with foreclosure consulting services provided to the homeowner of a residence in foreclosure unless the consideration is fully disclosed in writing to the homeowner.

Sec. 21.102. PROHIBITED CONDUCT. A foreclosure consultant may not:

(1) take any power of attorney from a homeowner for any purpose other than to inspect documents;

(2) for purposes of securing payment of compensation, acquire an interest, directly or indirectly, in the real or personal property of the homeowner of a residence in foreclosure with whom the foreclosure consultant has contracted to perform services; or

(3) take an assignment of wages to secure payment of compensation.

Sec. 21.103. RETENTION OF RECORDS. (a) A foreclosure consultant shall keep each record and document, including the foreclosure consultant contract, related to foreclosure consulting services performed on behalf of homeowners.

(b) A foreclosure consultant shall retain the records

1 described by Subsection (a) until at least the third anniversary of
2 the day the foreclosure consultant contract entered into by the
3 consultant and the homeowner was terminated or concluded.

4 [Sections 21.104-21.150 reserved for expansion]

5 SUBCHAPTER D. ENFORCEMENT

6 Sec. 21.151. CRIMINAL PENALTY. (a) A person commits an
7 offense if the person violates this chapter.

8 (b) An offense under this chapter is a Class C misdemeanor.

9 Sec. 21.152. DECEPTIVE TRADE PRACTICE. A violation of this
10 chapter is a false, misleading, or deceptive act or practice
11 actionable under Subchapter E, Chapter 17.

12 SECTION 2. The changes in law made by this Act apply to a
13 contract entered into on or after the effective date of this Act. A
14 contract entered into before the effective date of this Act is
15 governed by the law in effect on the date the contract was entered
16 into, and the former law is continued in effect for that purpose.

17 SECTION 3. This Act takes effect September 1, 2009.